

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

|                             |   |                           |
|-----------------------------|---|---------------------------|
| ELIZABETH RODRIGUEZ,        | ) |                           |
|                             | ) |                           |
| Claimant,                   | ) | <b>IC 05-507864</b>       |
|                             | ) |                           |
| v.                          | ) |                           |
|                             | ) |                           |
| ACTION COLLECTION SERVICES, | ) |                           |
| INC.,                       | ) |                           |
|                             | ) |                           |
| Employer,                   | ) | <b>FINDINGS OF FACT,</b>  |
|                             | ) | <b>CONCLUSION OF LAW,</b> |
| and                         | ) | <b>AND RECOMMENDATION</b> |
|                             | ) |                           |
| STATE INSURANCE FUND,       | ) | Filed November 17, 2006   |
|                             | ) |                           |
| Surety,                     | ) |                           |
|                             | ) |                           |
| Defendants.                 | ) |                           |
|                             | ) |                           |

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on September 1, 2006. Claimant was present and represented by Jerry J. Goicoechea of Boise. Alan K. Hull and Rachael M. O'Bar, both of Boise, represented Employer/Surety. Claimant testified. There were no exhibits admitted into evidence, although the parties submitted pre-hearing briefs. The parties submitted post-hearing briefs and this matter came under advisement on October 12, 2006.

**ISSUE**

By agreement of the parties, the sole issue to be decided is in the event Idaho Code § 72-208(2) applies to the facts of this case, does that section bar post-MMI permanent partial impairment (PPI) benefits?

## **CONTENTIONS OF THE PARTIES**

Claimant contends that “income benefits” referred to in Idaho Code § 72-208(2) do not include PPI benefits because the assessment of PPI is a **medical** appraisal of an injured worker’s loss of anatomical function and should not be considered an income benefit.

Defendants contend that the law is clear in Idaho that PPI benefits are considered to be income benefits and are barred in the event intoxication is found to be a “reasonable and substantial” cause of an injury. If Claimant has a problem with the statute, the legislature, not the Commission, is the proper forum to address any such problem. Finally, Claimant’s arguments regarding the constitutionality of Idaho Code § 72-208 are better left addressed by the Idaho Supreme Court, not the Industrial Commission.

## **EVIDENCE CONSIDERED**

Because the resolution of the issue presented here is strictly a matter of case law and statutory interpretation, there are no exhibits to consider other than the testimony presented at hearing that dealt primarily with the extent of Claimant’s injuries. However, the pre- and post-hearing briefs of the parties have been considered in rendering this decision.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

## **FINDING OF FACT**

1. Claimant was seriously injured in an automobile accident occurring on April 8, 2005. According to their Answer to Complaint, Defendants have paid \$265,489.06 in medical benefits as of May 30, 2006.

2. Defendants contend, and Claimant denies, that she was somehow intoxicated to the extent that such intoxication was a reasonable and substantial cause of her accident and

injuries so as to invoke the provisions of Idaho Code § 72-208(2) which provides in pertinent part: (2) If intoxication is a reasonable and substantial cause of an injury, **no income benefits shall be paid . . .**

Emphasis added.

3. The question in need of resolution here is whether PPI benefits are **income benefits** subject to the bar provided in Idaho Code § 72-208(2) in the event Claimant is otherwise found to be within the purview of that statute. In his briefing and at hearing, Claimant's counsel indicated that he is only arguing that PPI benefits are not income benefits subject to the bar in Idaho Code § 72-208(2), not temporary total or permanent partial disability benefits.

4. Prior to 1997, Idaho Code § 72-208 provided for a reduction in all post-MMI income benefits of 50% if the intoxication was the proximate cause of an employee's injuries. In 1997, the legislature amended the statute to bar all income benefits where intoxication was a reasonable and substantial cause of an injury. Exhibit A to Defendants' pre-hearing brief is the legislative history surrounding the 1997 amendment to Idaho Code § 72-208 and is clear that most, if not all of the concerns expressed by Claimant's counsel had been considered by the legislature. It is axiomatic that the Commission, as an administrative/quasi judicial body that is a creature of statute, is bound to follow the law as passed by the legislature. For reasons to follow, the Referee finds that Idaho Code § 72-208 is not ambiguous and is not subject to statutory construction. As stated in *City of Boise v. Industrial Commission*, 129 Idaho 906, 935 P.2d 169 (1997): Because interpretation of the workers' compensation statutes is a question of law, we exercise free review. It is well-settled that if a statute's language is clear and unambiguous, this Court will apply the statute without employing rules of statutory construction. The starting point

for any statutory interpretation is the literal wording of the statute, and we will give the statute's language its plain, obvious, and rational meaning. *Id.* at p. 909, internal citations omitted.

5. To find in Claimant's favor, it would be necessary to re-define "income benefits" to include medical benefits. Idaho Code § 72-102(16) provides: "Income benefits" means payments provided for or made under the provisions of this law to the injured employee disabled by an injury or occupational disease, or his dependents in case of death, **excluding medical and related benefits**. Emphasis added.

6. Idaho Code § 72-102(20) provides: "Medical and related benefits" means payments provided for or made for medical, hospital, burial and other services as provided in this law **other than income benefits**. Emphasis added.

7. Idaho Code §§ 72-422, 428, and 429 concern PPI benefits and speak in terms of **income benefits** for certain scheduled and unscheduled impairments. To argue that PPI benefits are really medical benefits because they involve a medical appraisal of a loss of anatomical function is too big a stretch and would result in a re-writing of the statute. The Commission possesses no such power. Further, the Idaho Supreme Court, not the Industrial Commission, must address any potential constitutional issues with the statute. *See, Struhs v. Protection Technologies, Inc.*, 133 Idaho 715, 722, 992 P.2d 164, 171 (1999).

8. Pursuant to the clear reading of the relevant statutes and the legislative intent behind disallowing income benefits, in this case PPI benefits, for those who are injured due to their own intoxication, the Referee finds that Claimant herein would be barred from receiving PPI benefits in the event she otherwise comes under the purview of Idaho Code § 72-208(2).

## CONCLUSION OF LAW

1. Idaho Code § 72-208(2) excludes all but medical and related benefits in the event intoxication is found to be a reasonable and substantial cause of injuries, and “medical and related benefits” do not include PPI or other income benefits.

## RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this \_\_14<sup>th</sup>\_\_ day of \_\_November\_\_, 2006.

INDUSTRIAL COMMISSION

\_\_\_\_/s/\_\_\_\_\_  
Michael E. Powers, Referee

ATTEST:

\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the \_\_17<sup>th</sup>\_\_ day of \_\_November\_\_, 2006, a true and correct copy of the **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

JERRY J GOICOECHEA  
PO BOX 6190  
BOISE ID 83707-6190

ALAN K HULL  
PO BOX 7426  
BOISE ID 83707-7426

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\_\_\_\_/s/\_\_\_\_\_